

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CATALINA CORPORATION

and

Case 1--CA--27731

MASSACHUSETTS LABORERS' DISTRICT COUNCIL

July 18, 1991
DECISION AND ORDER

By Member Crockett, Donovan, and Orriatt

Upon a charge filed by the Union on October 23, 1990, the General Counsel of the National Labor Relations Board issued a complaint on November 30, 1990, against Catalina Corporation, the Respondent, alleging that it has violated Sections 8(a)(1) and (5) and 8(d) of the National Labor Relations Act. Although properly served copies of the charge and the complaint, the Company has failed to file an answer.

On April 22, 1991, the General Counsel filed a Motion for Summary Judgment, with exhibits attached. On April 25, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless the Respondent files an answer to the

complaint within 14 days from the date of service, all of the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board. Further, the undisputed allegations in the Motion for Summary Judgment disclose counsel for the General Counsel, by letter dated February 26, 1991, notified the Respondent that unless an answer was received by the close of business March 8, 1991, a Motion for Summary Judgment would be filed.

In absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

The Company, a Massachusetts corporation at all times material, with an office and place of business in Nahant, Massachusetts, has been engaged in the construction industry as an excavation and back filling contractor and, in the course of its business operations, annually purchases and receives at its Nahant facility products, goods, and materials valued in excess of \$50,000 directly from points outside the Commonwealth of Massachusetts. It also annually performs services within the Commonwealth of Massachusetts valued in excess of \$50,000 for employers who are themselves directly engaged in interstate commerce. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

The Union has executed a series of collective-bargaining agreements with Associated General Contractors of Massachusetts, Inc. and Building Trades Employers Association of Boston and Eastern Massachusetts, Inc., the most recent of which is effective for the period June 1, 1988, to May 31, 1991. On

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June 30, 1988, the Respondent executed an Acceptance of Agreements and Declarations of Trust with the Union by which it agreed to be bound by the 1988--1991 agreement. Since about June 30, 1988, and at all times material herein, the Union has been designated the exclusive collective-bargaining representative of the employees in the unit and has been recognized as such by the Respondent. The unit consists of:

All employees of the Respondent in the classifications set forth in the 1988--1991 agreement, but excluding all other employees, guards and supervisors as defined in the Act.

At all times material herein, the Union, by virtue of Section 9(a) of the Act, has been, and is, the exclusive representative of the employees in the unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

Since about May 1, 1990, the Respondent has failed and refused to make payments to the following fringe benefit funds set out in the 1988--1991 agreement: (1) the Health and Welfare Fund; (2) the Pension Fund; (3) the Training Trust Fund; (4) the Legal Services Fund; and (5) the Annuity Fund. These subjects set forth above relate to the wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for purposes of collective bargaining.

By the refusal to make payments to the above funds, the Respondent has failed and refused, and is failing and refusing, to bargain collectively and in good faith with the representative of its employees, and the Respondent thereby has been engaging in unfair labor practices within the meaning of Sections 8(a)(1) and (5) and 8(d) of the Act.

Conclusions of Law

By refusing to make payments to the health and welfare, pension, training trust, legal services, and annuity funds, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Sections 8(a)(1) and (5) and 8(d) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. We shall order the Respondent to make its unit employees whole by making all payments to the health and welfare fund, pension fund, training trust fund, legal services fund, and annuity fund, as required by the 1988--1991 collective-bargaining agreement, which have not been paid and which would have been paid in the absence of the Respondent's unlawful unilateral discontinuance of the payments;¹ and by reimbursing unit employees for any expenses ensuing from the Respondent's failure to make the required payments, as set forth in Kraft Plumbing & Heating, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). All payments to employees shall be made with interest as prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Catalina Corporation, Nahant, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

¹ Any additional amounts due on trust fund payments shall be computed in the manner prescribed in Merryweather Optical Co., 240 NLRB 1213 (1979).

(a) Refusing to bargain with Massachusetts Laborers' District Council as the exclusive bargaining representative of the employees in the appropriate unit set forth below, by failing to make payments to the health and welfare fund, pension fund, training trust fund, legal services fund, and annuity fund as required by the 1988--1991 collective-bargaining agreement. The unit is:

All employees of the Respondent in the classifications set forth in the 1988--1991 agreement, but excluding all other employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make whole the unit employees by paying the amounts on their behalf to the health and welfare fund, pension fund, training trust fund, legal services fund, and annuity fund as required by the 1988--1991 collective-bargaining agreement with the Union, which have not been paid, and by reimbursing the unit employees for any expenses ensuing from the failure to make those payments, in the manner set forth in the remedy section of this decision.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying all payroll records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(c) Post at its facility in Nahant, Massachusetts, copies of the attached notice marked "'Appendix.'"² Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what step the Respondent has taken to comply.

Dated, Washington, D.C. July 18, 1991

Mary Miller Cracraft, Member

Dennis M. Devaney, Member

Clifford R. Oviatt, Jr., Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with the Massachusetts Laborers' District Council as the exclusive bargaining representative of the employees in the appropriate unit set forth below by failing to make payments to the health and welfare fund, pension fund, training trust fund, legal services fund, and annuity fund as provided in our 1988--1991 collective-bargaining agreement with the Union. The unit is:

All our employees in the classifications set forth in the 1988--1991 agreement, but excluding all other employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make whole our unit employees by paying the amounts on their behalf to the health and welfare fund, pension fund, training trust fund, legal services fund, and annuity fund as required in the collective-bargaining agreement, which have not been paid, and by reimbursing our unit employees with interest, for any of their expenses ensuing from our failure to make the required payments.

CATALINA CORPORATION

(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 10 Causeway Street, Sixth Floor, Boston, Massachusetts 02222-1072, Telephone 617--565--6739.